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BRIAN BOLITHO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN BOLITHO

CASE NO.

Plaintiff,

Civil Rights

v.

VALLEY RADIOLOGY MEDICAL  
ASSOCIATES, INC.; SOUTH DRIVE  
MEDICAL ASSOCIATES, INC; PIO V.  
DEFEO; MARIA E. DEFEO; and DOES  
1-25, Inclusive,

Defendants.

**COMPLAINT FOR DENIAL OF DISABLED  
ACCESS TO DISABLED PERSONS IN  
VIOLATION OF TITLE III OF THE  
AMERICANS WITH DISABILITIES ACT  
AND CALIFORNIA LAWS REQUIRING  
FULL AND EQUAL ACCESS TO PUBLIC  
ACCOMMODATIONS; INJUNCTIVE  
RELIEF AND DAMAGES PURSUANT TO  
42 U.S.C. 12101 et seq.;  
CALIFORNIA CIVIL CODE §§51, 52,  
54 AND 54.1; VIOLATION OF  
CALIFORNIA HEALTH AND SAFETY  
CODE §19955, et seq.,**

**DEMAND FOR JURY TRIAL**

Plaintiff BRIAN BOLITHO complains that defendants  
VALLEY RADIOLOGY MEDICAL ASSOCIATES, INC.; SOUTH DRIVE MEDICAL  
ASSOCIATES, INC.; PIO V. DEFEO; MARIA E. DEFEO; and DOES 1-25,  
Inclusive (hereinafter "defendants"), have denied him and  
continue to deny him "full and equal access" to the public  
accommodations, and goods and services offered to the general  
public, at the Valley Radiology locations in Mountain View and  
Palo Alto, California, because of his physical disability, in

1 violation of Title III of the Americans with Disabilities Act  
 2 of 1990 and California civil rights laws and regulations, and  
 3 hereby more particularly alleges as follows:

4  
 5 **FIRST CAUSE OF ACTION:**  
 6 **DAMAGES AND INJUNCTIVE RELIEF FOR DENIAL OF FULL AND EQUAL**  
 7 **ACCESS TO A PLACE OF PUBLIC ACCOMMODATION**  
 8 **(Civil Code §§ 54, 54.1, et seq.; Health & Safety Code §§ 19953**  
 9 **and 19955 et seq.)**

10 1. Plaintiff BRIAN BOLITHO is a "person with a  
 11 disability" or "physically handicapped person". Plaintiff  
 12 requires the use of a wheelchair for locomotion and is unable  
 13 to use portions of public facilities which are not accessible  
 14 to disabled persons who require the use of a wheelchair.

15 2. **SUMMARY:** This case involves the denial of accessible  
 16 facilities to Plaintiff BRIAN BOLITHO at two locations of the  
 17 Valley Radiology chain, located at 285 South Drive, #5,  
 18 Mountain View, California; and 451 Sherman Ave., #110, Palo  
 19 Alto, California. BRIAN BOLITHO was denied his civil rights  
 20 under both California law and federal law, to full and equal  
 21 access at these facilities because they were not, and are not  
 22 now, properly accessible to physically disabled persons who use  
 23 wheelchairs. Plaintiff BRIAN BOLITHO is deterred from  
 24 returning to these facilities to receive medical services until  
 25 such time as the facilities are made fully accessible and  
 26 defendants' discriminatory policies are modified. Plaintiff  
 27 seeks injunctive relief to require defendants to make their  
 28 facilities accessible to disabled persons, and to ensure that  
 all disabled patrons will be provided accessible entrance,  
 restroom facilities, medical diagnostic equipment, and other

1 public facilities, as required by law; and to require  
2 defendants to modify their policies and procedures to provide  
3 their services to disabled persons such as plaintiff. In the  
4 alternative, plaintiff seeks to enjoin each of the subject  
5 facilities from operating as a place of "public accommodation"  
6 or "business establishment" which discriminates against  
7 plaintiff and other persons with disabilities. Plaintiff also  
8 seeks recovery of damages for his personal injuries and  
9 discriminatory experiences and for the continuing day-to-day  
10 denial of access which results from defendants' failure to  
11 provide accessible facilities. Plaintiff BRIAN BOLITHO also  
12 seeks recovery of statutory attorney fees, litigation expenses  
13 and costs, under federal law and California law.

14 3. **JURISDICTION:** This Court has jurisdiction of this  
15 action pursuant to 28 USC §1331 for violations of Title III of  
16 the Americans with Disabilities Act of 1990, 42 USC §12101 et  
17 seq. Pursuant to pendant jurisdiction, attendant and related  
18 causes of action arising from the same facts are also brought  
19 under California law, including but not limited to violations  
20 of California Civil Code §§ 51, 52, 54, 54.1 and 55;  
21 California Health & Safety Code §19955 et seq., including  
22 §19959; and California Code of Regulations Title 24-2  
23 (hereinafter "Title 24").

24 4. **VENUE:** Venue is proper in this court pursuant to 28  
25 USC 1391(b) because the subject property is located in this  
26 district and plaintiff's causes of action arose here.

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1           5.     **INTRADISTRICT:** This case should be assigned to the  
 2 San Jose intradistrict, where the subject property is located  
 3 and where plaintiff's causes of action arose.

4           6.     **PARTIES:** Plaintiff BRIAN BOLITHO is a "qualified"  
 5 physically disabled person who cannot walk due to paraplegia as  
 6 a result of a spinal injury, and who requires use of a  
 7 wheelchair. VALLEY RADIOLOGY MEDICAL ASSOCIATES, INC.; SOUTH  
 8 DRIVE MEDICAL ASSOCIATES, INC.; and DOES 1-12, Inclusive, are  
 9 the owners, operators, lessors, and lessees of the property,  
 10 building and facilities located at 285 South Drive, #5,  
 11 Mountain View, California. VALLEY RADIOLOGY MEDICAL  
 12 ASSOCIATES, INC.; PIO V. DEFEO; MARIA E. DEFEO; and DOES 13-25,  
 13 Inclusive, are the owners, operators, lessors and lessees of  
 14 the property, building and facilities located at 451 Sherman  
 15 Ave. #110, Palo Alto, California. These locations are operated  
 16 as medical imaging offices and each is a "public accommodation"  
 17 and "business entity" subject to the requirements of California  
 18 Health & Safety Code §19955 et seq. and of California Civil  
 19 Code §51, §54 and §54.1, et seq. On information and belief,  
 20 such facilities have, since July 1, 1970, undergone  
 21 construction and/or "alterations, structural repairs, or  
 22 additions," subjecting all such buildings and facilities to  
 23 disabled access requirements pursuant to Health & Safety Code  
 24 §19953-19959, et seq.

25           7.     The true names and capacities of Defendants Does 1  
 26 through 25, Inclusive, are unknown to plaintiff who therefore  
 27 sues said defendants by such fictitious names. Plaintiff is  
 28 informed and believes that each of the defendants herein

1 designated as a Doe is legally responsible in some manner for  
 2 the events and happenings herein referred to and caused injury  
 3 and damages proximately thereby to plaintiff; plaintiff prays  
 4 leave of Court to amend this Complaint to show such true names  
 5 and capacities when the same have been ascertained.

6 8. Defendants VALLEY RADIOLOGY MEDICAL ASSOCIATES, INC.;  
 7 SOUTH DRIVE MEDICAL ASSOCIATES, INC.; PIO V. DEFEO; MARIA E.  
 8 DEFEO; and DOES 1-25, Inclusive, are and were the owners,  
 9 operators, lessors and lessees of the subject properties,  
 10 buildings, and facilities at all relevant times. Plaintiff is  
 11 informed and believes that each of the defendants herein is the  
 12 agent, employee or representative of each of the other  
 13 defendants, and performed all acts and omissions stated herein  
 14 within the scope of such agency or employment or representative  
 15 capacity and is responsible in some manner for the acts and  
 16 omissions of the other defendants in proximately causing the  
 17 damages complained of herein.

18 9. Plaintiff BRIAN BOLITHO and other similarly situated  
 19 physically disabled persons, including those who require the  
 20 use of a wheelchair, are unable to use public facilities on a  
 21 "full and equal" basis unless each such facility is in  
 22 compliance with the relevant provisions of California Building  
 23 Codes and statutes. Plaintiff is a member of that portion of  
 24 the public whose rights are protected by the provisions of Cal.  
 25 Civil Code §§ 51, 52, 54, and 54.1.

26 10. **STATUTORY PROVISIONS:** California Civil Code §54.1  
 27 states that individuals with disabilities are:

28 "entitled to full and equal access, as other members of the  
 general public, to accommodations, advantages,

**Complaint for Injunctive Relief and Damages**

1 facilities...places of public accommodations, amusement, or  
2 resort, and other places to which the general public is  
3 invited, subject only to the conditions and limitations  
4 established by law...and applicable alike to all persons."

5 Health & Safety Code §§ 19955 and 19955.5 were enacted "To  
6 ensure that public accommodations or facilities constructed in  
7 this state with private funds adhere to the provisions of  
8 Chapter 7 (commencing with §4450) of Division 5 of Title 1 of  
9 the Government Code." Section 19955 also requires that "When  
10 sanitary facilities are made available for the public, clients,  
11 or employees... they shall be made available for persons with  
12 disabilities." California Code of Regulations, Title 24-2 was  
13 in effect at the time of each alteration which occurred at such  
14 public facility since July 1, 1982, additionally requiring  
15 access complying with the specifications of Title 24-2 whenever  
16 any construction, "alteration, structural repair or addition"  
17 was performed. Further, any construction, alterations,  
18 structural repairs, or additions which occurred between July 1,  
19 1970 and July 1, 1982, required compliance with disabled access  
20 standards pursuant to American Standards Association  
21 Specifications ("ANSI"). All such constructions and/or  
22 alterations were carried out by the current defendant owners or  
23 operators, or by their predecessors in interest, whose acts and  
24 omissions are the continuing and current responsibility of all  
25 current owners, operators, lessors and lessees.

26 **FACTUAL STATEMENT**

27 11. In January of 2004, plaintiff BRIAN BOLITHO was  
28 involved in an automobile accident, during which he suffered

1 torn arm muscles and dislocation of his arm joints at the  
2 elbows and shoulders. After his treatment and release from the  
3 emergency room, he made an appointment with his primary care  
4 doctor, who ordered an MRI. His primary care doctor's office  
5 set up an appointment for plaintiff to have an MRI at Valley  
6 Radiology in Mountain View, California. In preparation for  
7 this appointment, a staff member from Valley Radiology in  
8 Mountain View called plaintiff to make a preliminary  
9 appointment for him to get checked for metal in his body before  
10 he could have the MRI, since metal in or on the body interferes  
11 with the MRI procedure. Plaintiff made arrangements to go to  
12 Valley Radiology in Mountain View for such a checkup.

13 12. On or about January 13, 2004, plaintiff was about to  
14 go to his preliminary appointment at Valley Radiology in  
15 Mountain View when a technician from that office telephoned  
16 him. She said that she had just realized from reviewing his  
17 file that he was a wheelchair user. She further told plaintiff  
18 that because he was a wheelchair user, her office could not see  
19 him, could not serve him, and he should not even go to the  
20 office. He therefore did not go to Valley Radiology in  
21 Mountain View and was deterred from going to this location.

22 13. A few days later, on or about January 22, 2004,  
23 plaintiff learned that there was another Valley Radiology  
24 location in Palo Alto, only a few blocks from his home. He  
25 decided to visit that facility to see if he would be able to  
26 get his MRI there. He went to the facility that same day,  
27 entered, and asked if he would be able to make an appointment  
28 to get an MRI, and explained that he had a doctor's referral to

1 Valley Radiology for an MRI. The employee at Valley Radiology  
2 in Palo Alto told plaintiff that they could not serve plaintiff  
3 because they could not transfer him from his wheelchair onto  
4 the MRI table. This employee told him that she could not help  
5 him and he would have to go somewhere else for service.

6 14. Because of Valley Radiology's refusal to serve  
7 plaintiff, he has been unable to have an MRI, and therefore has  
8 been unable to receive appropriate and needed treatment for his  
9 injuries, which has caused bodily injuries, pain and suffering,  
10 all to his damages.

11 15. In addition to the discriminatory policy of refusing  
12 to serve persons who use wheelchairs, these public facilities  
13 are inaccessible to persons with disabilities in other aspects,  
14 including lack of any accessible medical equipment;  
15 inaccessible entry way and restrooms at the Mountain View  
16 facility; and inaccessible exterior path of travel and entry  
17 way at the Palo Alto facility, all rendering such facilities  
18 inaccessible to and unusable by plaintiff and other mobility  
19 disabled persons. All public facilities at the subject  
20 properties must be brought into compliance with all applicable  
21 federal and state code requirements for disabled access.

22 16. Further, each and every violation of the Americans  
23 With Disabilities Act of 1990 (as pled in the Third Cause of  
24 Action, the contents of which are repled and incorporated  
25 herein, word for word, as if separately repled), also  
26 constitutes a separate and distinct violation of §54(c)  
27 California Civil Code, thus independently justifying an award  
28



1 of damages and injunctive relief pursuant to California law,  
2 including but not limited to §§ 54.3 and 55 Civil Code.

3 17. Further, each and every violation of the Americans  
4 With Disabilities Act of 1990 (as pled in the Third Cause of  
5 Action, the contents of which are repled and incorporated  
6 herein, word for word, as if separately repled), also  
7 constitutes a separate and distinct violation of §54.1(d)  
8 California Civil Code, thus independently justifying an award  
9 of damages and injunctive relief pursuant to California law,  
10 including but not limited to §§ 54.3 and 55 Civil Code.

11 18. **INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief  
12 to prohibit the acts and omissions of defendants as complained  
13 of herein which are continuing on a day-to-day basis and which  
14 have the effect of wrongfully excluding plaintiff and other  
15 members of the public who are physically disabled wheelchair  
16 users from full and equal access to these public facilities.  
17 Such acts and omissions are the cause of humiliation and mental  
18 and emotional suffering of plaintiff BRIAN BOLITHO in that  
19 these actions continue to treat him as an inferior and second  
20 class citizen and serve to discriminate against him on the sole  
21 basis that he is a person with disabilities who requires the  
22 use of a wheelchair for movement in public places. Plaintiff  
23 is unable, so long as such acts and omissions of defendants  
24 continue, to achieve equal access to and use of these public  
25 facilities. The acts of defendants have proximately caused and  
26 will continue to cause irreparable injury to plaintiff if not  
27 enjoined by this Court.

28

1           19. Wherefore plaintiff asks this Court to preliminarily  
 2 and permanently enjoin any continuing refusal by defendants to  
 3 grant full and equal access to plaintiff in the respects  
 4 complained of and to require defendants to comply forthwith  
 5 with the applicable statutory requirements relating to access  
 6 for disabled persons, or, alternatively, to close their  
 7 inaccessible facilities to the public and cease to operate  
 8 inaccessible public accommodations. Such injunctive relief is  
 9 provided by California Health & Safety Code §19953 and  
 10 California Civil Code §55, and other law.

11           20. **DAMAGES:** As a result of the denial of equal access  
 12 to the facility and due to the acts and omissions of defendants  
 13 and each of them in owning, operating, leasing, constructing,  
 14 altering, and maintaining the subject public facilities,  
 15 plaintiff suffered a violation of his Civil Rights including  
 16 but not limited to rights under Civil Code §§ 54 and 54.1, and  
 17 suffered physical personal injuries and bodily injuries,  
 18 physical discomfort and pain, mental and emotional distress,  
 19 embarrassment and humiliation, all to his damages as  
 20 hereinafter stated. Defendants' actions and omissions to act  
 21 constitute discrimination against plaintiff on the sole basis  
 22 that he was and is physically disabled and unable, because of  
 23 the architectural barriers and discriminatory policies created  
 24 and/or maintained by the defendants in violation of the subject  
 25 laws, to use the public facilities on a full and equal basis as  
 26 other persons. Plaintiff also seeks trebling of all actual  
 27 damages, general and special, as provided by Civil Code §54.3.

28

1           21. **TREBLE DAMAGES:** On information and belief, defendants  
2 have been aware prior to plaintiff's described encounters that  
3 their denial of access and their lack of accessible facilities  
4 at the subject property was denying "full and equal access" to  
5 disabled persons such as plaintiff and would continue to deny  
6 such access on a daily basis until fully accessible facilities  
7 were provided for disabled persons. For example, defendants'  
8 facilities have designated disabled accessible parking and  
9 restrooms, and yet each office maintains a policy of refusing  
10 to serve disabled wheelchair users. This conduct evidences a  
11 conscious disregard for the rights of plaintiff and other  
12 disabled persons, and justifies treble damages pursuant to  
13 Civil Code §54.3.

14           22. **FEES AND COSTS:** As a result of defendants' acts and  
15 omissions, plaintiff has been required to incur attorney fees,  
16 litigation expenses, and costs as provided by statute, in order  
17 to enforce plaintiff's rights and to enforce provisions of the  
18 law protecting access for disabled persons and prohibiting  
19 discrimination against disabled persons. Plaintiff therefore  
20 seeks recovery of all reasonable attorney fees, litigation  
21 expenses, and costs, pursuant to the provisions of Civil Code  
22 §§ 54.3 and 55 and Health and Safety Code §19953.  
23 Additionally, plaintiff's lawsuit is intended to force the  
24 defendants to make their facilities accessible to all disabled  
25 members of the public, justifying "public interest" attorney  
26 fees, litigation expenses and costs pursuant to the provisions  
27 of §1021.5 Code of Civil Procedure and other applicable law.  
28

Wherefore plaintiff prays for relief as hereinafter stated:

**SECOND CAUSE OF ACTION:  
VIOLATION OF UNRUH CIVIL RIGHTS ACT  
CALIFORNIA CIVIL CODE SECTIONS 51 AND 52,  
DENIAL OF FULL AND EQUAL ACCOMMODATION IN A BUSINESS  
ESTABLISHMENT ON THE BASIS OF DISABILITY**

23. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in Paragraphs 1 through 22, above, and incorporates them herein by reference as if separately repled.

24. At all times herein mentioned, the Unruh Civil Rights Act, California Civil Code §51(b), provided that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color religion, ancestry, national origin, disability or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Pursuant to California Civil Code §51(f),

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

25. Defendants' medical imaging offices are each a "business establishment" subject to Cal. Civil Code §51(b). Plaintiff suffered damages as above described as a result of defendants' violation of California Civil Code §§ 51(b) and 51(f) in multiple respects, including but not limited to violations of the ADA, as described in the Third Cause of Action, *infra*, the contents of which cause of action are incorporated herein as if separately repled. California Civil Code §52(a) provides that each such violation entitles plaintiff to "the actual damages, and any amount that may be

1 determined by a jury, or a court sitting without a jury, up to  
2 a maximum of three times the amount of actual damage but in no  
3 case less than four thousand dollars (\$4,000), and any  
4 attorney's fees that may be determined by the court in addition  
5 thereto..."

6 WHEREFORE, plaintiff prays for damages and injunctive  
7 relief as hereinafter stated.

8  
9 **THIRD CAUSE OF ACTION:**  
10 **VIOLATION OF TITLE III OF THE AMERICANS WITH**  
11 **DISABILITIES ACT OF 1990 (42 USC §12101FF):**  
**PROHIBITION AGAINST DISCRIMINATION IN A PLACE OF ACCOMMODATION**  
**ON THE BASIS OF DISABILITY**

12 26. Plaintiff repleads and incorporates by reference, as  
13 if fully set forth again herein, the allegations contained in  
14 Paragraphs 1 through 25 of this Complaint, and incorporates  
15 them herein as if separately repled.

16 27. Pursuant to law, in 1990 the United States Congress  
17 made findings per 42 USC §12101 regarding physically disabled  
18 persons, finding that laws were needed to more fully protect  
19 "some 43 million Americans [with] one or more physical or  
20 mental disabilities;" that "historically society has tended to  
21 isolate and segregate individuals with disabilities;" that  
22 "such forms of discrimination against individuals with  
23 disabilities continue to be a serious and pervasive social  
24 problem;" that "the Nation's proper goals regarding individuals  
25 with disabilities are to assure equality of opportunity, full  
26 participation, independent living and economic self sufficiency  
27 for such individuals;" and that "the continuing existence of  
28 unfair and unnecessary discrimination and prejudice denies

1 people with disabilities the opportunity to compete on an equal  
2 basis and to pursue those opportunities for which our free  
3 society is justifiably famous..."

4 28. Congress stated as its purpose in passing the  
5 Americans with Disabilities Act (42 USC §12101(b))

6 It is the purpose of this act

7 (1) to provide a clear and comprehensive national mandate  
8 for the elimination of discrimination against individuals  
with disabilities;

9 (2) to provide clear, strong, consistent, enforceable  
10 standards addressing discrimination against individuals  
with disabilities;

11 (3) to ensure that the Federal government plays a central  
12 role in enforcing the standards established in this act on  
behalf of individuals with disabilities; and

13 (4) to invoke the sweep of Congressional authority,  
14 including the power to enforce the 14th Amendment and to  
15 regulate commerce, in order to address the major areas of  
discrimination faced day to day by people with  
disabilities. (Emphasis added)

16 29. As part of the Americans with Disabilities Act,  
17 Public Law 101-336, (hereinafter the "ADA"), Congress passed  
18 "Title III - Public Accommodations and Services Operated by  
19 Private Entities" (42 USC 12181ff). The subject properties and  
20 facilities are "private entities" which are considered "public  
21 accommodations" for purposes of Title III (42 USC 12181(7)),  
22 including but not limited to:

23 42 USC 12181(7)(F) "a...professional office of a  
24 health care provider, hospital, or other service  
establishment."

25 30. Pursuant to 42 USC §12182(a), "No individual shall be  
26 discriminated against on the basis of disability in the full  
27 and equal enjoyment of the goods, services, facilities,  
28 privileges, advantages, or accommodations of any place of

1 public accommodation by any person who owns, leases, or leases  
2 to, or operates a place of public accommodation."

3 31. Among the specific prohibitions against  
4 discrimination were included:

5 42 USC (12182(b)(2)(A)(ii): "A failure to make reasonable  
6 modifications in policies, practices or procedures when such  
7 modifications are necessary to afford such goods, services,  
8 facilities, privileges, advantages or accommodations to  
9 individuals with disabilities...;"

10 42 USC (12182(b)(A)(iii): "a failure to take such steps as may  
11 be necessary to ensure that no individual with a disability is  
12 excluded, denied service, segregated, or otherwise treated  
13 differently than other individuals because of the absence of  
14 auxiliary aids and services...;"

15 42 USC (12182(b)(2)(A)(iv): "A failure to remove architectural  
16 barriers, and communication barriers that are structural in  
17 nature, in existing facilities... where such removal is readily  
18 achievable;"

19 42 USC (12182(b)(2)(A)(v): "Where an entity can demonstrate  
20 that the removal of a barrier under clause (iv) is not readily  
21 achievable, a failure to make such goods, services, facilities,  
22 privileges, advantages, or accommodations available through  
23 alternative methods if such methods are readily achievable."  
24 The acts and omissions of Defendants set forth herein were in  
25 violation of Plaintiff's rights under the ADA, and the  
26 regulations promulgated thereunder, 28 CFR Part 36ff.

27 32. The removal of each of the barriers complained of by  
28 plaintiff as hereinabove alleged, was at all times herein  
mentioned "readily achievable" under the standards established  
by the Department of Justice, implementing Title III of the  
Americans With Disabilities Act. As noted hereinabove, removal  
of each and every one of the architectural barriers complained  
of herein was also required under California law due to  
"alterations, structural repairs, or additions." Further, on  
information and belief, alterations to existing facilities  
since January 26, 1993 have also independently triggered

1 requirements for removal of barriers to access for disabled  
2 persons pursuant to 42 USC §12183.

3 33. On information and belief, as of the date of  
4 plaintiff's encounter at the premises and the filing of this  
5 Complaint, the premises have denied and continue to deny full  
6 and equal access to plaintiff and to other disabled persons,  
7 including wheelchair users, in other respects, which violated  
8 plaintiff's rights to full and equal access and which  
9 discriminated against plaintiff on the basis of his disability,  
10 thus wrongfully denying to plaintiff the full and equal  
11 enjoyment of the goods, services, facilities, privileges,  
12 advantages and accommodations, in violation of §302 of the ADA,  
13 42 USC §12182.

14 34. Pursuant to section 308 of the ADA [42 USC 12188ff]  
15 plaintiff is entitled to the remedies and procedures set forth  
16 in §204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-  
17 3(a), as plaintiff is being subjected to discrimination on the  
18 basis of disability in violation of this title or has  
19 reasonable grounds for believing that he is about to be  
20 subjected to discrimination in violation of §302 and §303 of  
21 the ADA. On information and belief, defendants have continued  
22 to violate the law and deny plaintiff and other disabled  
23 persons by denying access to these public accommodations since  
24 on or before plaintiff's encounters as previously discussed.  
25 Pursuant to §308(a)(2), "In cases of violations of  
26 §302(b)(2)(A)(iv) and (303(a)... injunctive relief shall  
27 include an order to alter facilities to make such facilities  
28



1 readily accessible to and usable by individuals with  
2 disabilities to the extent required by this title."

3 35. Plaintiff seeks relief pursuant to remedies set forth  
4 in §204(a) of the Civil Rights Act of 1964 (42 USC 2000(a)-  
5 3(a)), and pursuant to Federal Regulations adopted to implement  
6 the Americans with Disabilities Act of 1990. Plaintiff is a  
7 person, for purposes of the ADA (42 USC §12188), who is being  
8 subjected to discrimination on the basis of disability in  
9 violation of Title III and who has reasonable grounds for  
10 believing he will be subjected to such discrimination each time  
11 that he may attempt to use the subject properties and premises.  
12 Plaintiff remains deterred from returning to such facilities  
13 each and every day until such facilities are made accessible to  
14 disabled persons.

15 Wherefore plaintiff prays for relief as hereinafter  
16 stated:

17 **PRAYER**

18 Plaintiff BRIAN BOLITHO prays that this Court:

19 1. Issue a preliminary and permanent injunction  
20 directing defendants as current owners, operators, lessors,  
21 and/or lessees of the subject premises to modify the above  
22 described properties and premises and related facilities, and  
23 modify their policies and procedures so that each provides full  
24 and equal access to all citizens, including persons with  
25 disabilities; or in the alternative, directing defendants to  
26 close their facilities to the public and cease to operate as  
27 public accommodations or business establishments until such  
28

1 time as the facilities are made accessible to persons with  
2 disabilities;

3 2. Retain jurisdiction over defendants until such time  
4 as the Court is satisfied that defendants' unlawful policies,  
5 practices, acts and omissions, and maintenance of inaccessible  
6 public facilities as complained of herein no longer occur, and  
7 cannot recur;

8 3. Award to plaintiff BRIAN BOLITHO all appropriate  
9 damages, including but not limited to statutory damages,  
10 general damages and treble damages, in an amount within the  
11 jurisdiction of the Court, all according to proof;

12 4. Award to plaintiff all reasonable attorney fees,  
13 litigation expenses, and costs of this proceeding as provided  
14 by law; and

15 5. Grant such other and further relief as this Court may  
16 deem just and proper.

17  
18 Dated: November \_\_, 2004

PAUL L. REIN  
PATRICIA BARBOSA  
JULIE MCLEAN  
LAW OFFICES OF PAUL L. REIN

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22 Attorneys for Plaintiff  
BRIAN BOLITHO  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: November \_\_, 2004

PAUL L. REIN  
PATRICIA BARBOSA  
JULIE MCLEAN  
LAW OFFICES OF PAUL L. REIN

\_\_\_\_\_  
Attorneys for Plaintiff  
BRIAN BOLITHO

**CERTIFICATION OF INTERESTED ENTITIES OR PARTIES**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: November \_\_, 2004

PAUL L. REIN  
PATRICIA BARBOSA  
JULIE MCLEAN  
LAW OFFICES OF PAUL L. REIN

\_\_\_\_\_  
Attorneys for Plaintiff  
BRIAN BOLITHO